

DECISION



McLody
14746 PLT
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-199854

DATE: August 27, 1980

MATTER OF: Maintenance, Incorporated

DIGEST:

[Protest Against]

1. Determination ~~whether~~ to set aside procurement under section 8(a) of Small Business Act is matter for contracting agency and SBA and will not be reviewed by GAO absent showing of fraud or bad faith on part of Government officials.
2. Issues raised concerning contractor's ability to perform are basically matters for determination by SBA and not GAO; because of broad discretion afforded SBA by statute, judgmental decisions under section 8(a) will not be questioned absent showing of fraud or bad faith on part of Government officials.

Maintenance Incorporated (Maintenance) protests the setting aside of a contract under the Small Business Administration's (SBA) 8(a) program and the award of that contract to Aleman Food Services (Aleman).

Request for proposals (RFP) No. DAKF48-80-R-0078, issued by the Army for food services at Fort Hood, Texas, was set aside for socially and economically disadvantaged businesses pursuant to section 8(a) of the Small Business Act. Maintenance now contends that this set-aside was improper and also raises a number of questions pertaining to the ability of Aleman to satisfactorily perform the contract. Maintenance requests that the contract be withdrawn from the set-aside program and resolicited by the Army.

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Section 8(a) of the Small Business Act authorizes the SBA to enter into contracts with any Government agency with procuring authority and to arrange the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. The contracting officer is authorized "in his discretion" to let the contract to SBA upon such terms and conditions as may be agreed upon by the procuring agency and SBA. In light of this broad discretion, we do not review agency determinations to set aside procurements under section 8(a) unless there is a showing of bad faith or fraud on the part of Government officials. See E-Z Tight, Inc., 59 Comp. Gen. 122 (1979), 79-2 CPD 394; American Laundry, B-195070, July 23, 1979, 79-2 CPD 49; Chemical Technology, Inc., B-190165, January 18, 1978, 78-1 CPD 46. No such showing has been made here.

Similarly, the issues raised by Maintenance concerning Aleman's ability to perform are basically matters for determination by SBA and not this Office. Our review of SBA determinations under the 8(a) program is limited to determining whether SBA has followed its own regulations. Because of the broad discretion afforded SBA by statute, judgmental decisions under section 8(a) will not be questioned absent a showing of fraud or bad faith on the part of Government officials. See Orincon Corporation, 58 Comp. Gen. 665 (1979), 79-2 CPD 39; Jazco Corporation, B-197550, February 13, 1980, 80-1 CPD 132. There is no indication that the SBA failed to comply with its own regulations in making the award to Aleman and neither fraud nor bad faith on the part of any Government official has been alleged.

Accordingly, the protest is dismissed.

Harry R. San Clive
for Milton J. Socolar
General Counsel